**FILED**

**NOV 16 2005**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARCO ANTONIO RODRIGUEZ
PONCE; et al.,

Petitioners,

V.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-74271

Agency Nos. A95-448-730
A95-448-902

MEMORANDUM[*]

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted November 8, 2005[**]

Before:      WALLACE, LEAVY and BERZON, Circuit Judges.

Marco Antonio Rodriguez Ponce and Rosia Rodriguez Ponce, natives and

citizens of Mexico, petition for review of the Board of Immigration Appeals'

("BIA") order dismissing their appeal from an immigration judge's ("IJ") order

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[*]      This disposition is not appropriate for publication and may not be
cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

[**]      The panel unanimously finds this case suitable for decision without
oral argument.  *See* Fed. R. App. P. 34(a)(2).

denying cancellation of removal based on a determination that they abandoned their applications. We have jurisdiction pursuant to 8 U.S.C. § 1252, and we deny the petition for review.

In their opening brief, Petitioners do not challenge the BIA's determination that the IJ properly denied Petitioners a continuance and deemed their applications for cancellation of removal abandoned. Because those determinations form the basis of the BIA's decision, Petitioners waive any challenge to the BIA's order. *See Martinez-Serrano v. INS*, 94 F.3d 1256, 1259 (9th Cir. 1996).

Petitioners' contentions regarding continuous physical presence are unavailing because the BIA did not base its decision on that ground.

Petitioners' contention that the BIA inappropriately applied the summary affirmance guideline, 8 C.F.R. §§ 1003.1(e)(4)(A) and (b), is unavailing because the BIA did not summarily affirm.

The voluntary departure period was stayed, and that stay will expire upon issuance of the mandate. *See Desta v. Ashcroft*, 365 F.3d 741, 750 (9th Cir. 2004).

**PETITION FOR REVIEW DENIED.**